

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MELISSA BUCK,  
*et al.*

Plaintiffs,

v.

ROBERT GORDON,  
*et al.*

Defendants.

CASE NO. 1:19-CV-00286

HON. ROBERT J. JONKER  
United States District Judge

**NOTICE REGARDING NOTICE OF  
NONENFORCEMENT OF CHALLENGED REGULATION AND  
NOTICE OF PROPOSED RULEMAKING TO REVISE CHALLENGED REGULATION**

Federal Defendants hereby notify the Court that on November 1, 2019, the Department of Health and Human Services (HHS) issued a Notice of Nonenforcement regarding certain regulatory provisions promulgated at 81 Fed. Reg. 89,393 (Dec. 12, 2016), including 45 C.F.R. § 75.300(c), and a Notice of Proposed Rulemaking (NPRM) to repromulgate or revise such provisions. *See* <https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html>. The Notice of Nonenforcement and NPRM are available on HHS's website, *see* <https://www.hhs.gov/sites/default/files/hhs-grants-regulation-notice-of-non-enforcement.pdf> (Notice of Nonenforcement); <https://www.hhs.gov/sites/default/files/hhs-grants-regulation-nprm.pdf> (NPRM), will soon be published in the Federal Register, and are attached hereto for the Court's convenience. Because this Court's injunction against Federal Defendants is predicated on the possibility of enforcement of 45 C.F.R § 75.300(c) against Michigan based on Plaintiff St. Vincent's religious exercise, Federal Defendants are notifying the Court of these developments.

In the Notice of Nonenforcement, HHS states that it is exercising its enforcement discretion not to enforce the regulatory provisions promulgated at 81 Fed. Reg. 89,393, including 45 C.F.R. § 75.300(c), pending repromulgation.

In the NPRM, HHS proposes to repromulgate in amended form 45 C.F.R. § 75.300(c), among other regulatory provisions. Specifically, HHS proposes to revise that provision to state: “It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.” NPRM at 20.

Federal Defendants are assessing the impact of these developments on this litigation.

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

ANDREW BYERLY BIRGE  
United States Attorney

MICHELLE BENNETT  
Assistant Branch Director

Dated: November 1, 2019

/s/ Christopher A. Bates  
CHRISTOPHER A. BATES  
Senior Counsel to the Assistant Attorney General  
U.S. Department of Justice, Civil Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 514-3307  
christopher.a.bates@usdoj.gov

*Counsel for Federal Defendants*